

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IVAN SANCHEZ ARIAS, a minor by
and through his Guardian Ad Litem
YOLANDA ARIAS,

Plaintiff,

v.

WILLIAM HARM, California Highway
Patrol Officer,

Defendant.

No. 09-cv-00760 CW

PRELIMINARY JURY
INSTRUCTIONS

DUTY OF THE JURY

Ladies and gentlemen: You are now the jury in this case.
It is my duty to instruct you on the law.

These instructions are preliminary instructions to help
you understand the principles that apply to civil trials and
to help you understand the evidence as you listen to it. You
will be allowed to keep this set throughout the trial to
which to refer. This set of instructions is not to be taken
home and must remain in the jury room when you leave in the
evenings. At the end of the trial, I will give you a final
set of instructions. It is the final set of instructions
that will govern your deliberations.

You must not infer from these instructions or from
anything I may say or do as indicating that I have an opinion

1 regarding the evidence or what your verdict should be. It is
2 your duty to find the facts from all the evidence in the
3 case. To those facts you will apply the law as I give it to
4 you. You must follow the law as I give it to you whether you
5 agree with it or not. And you must not be influenced by any
6 personal likes or dislikes, opinions, prejudices, or
7 sympathy. That means that you must decide the case solely on
8 the evidence before you. You will recall that you took an
9 oath to do so.

10 In following my instructions, you must follow all of
11 them and not single out some or ignore others; they are all
12 important.

13 **CLAIMS AND DEFENSES**

14 To help you follow the evidence, I will give you a brief
15 summary of the positions of the parties:

16 In this lawsuit Plaintiff claims that Defendant violated
17 his constitutional rights, under the First and Fourth
18 Amendments, in the following ways: (1) Defendant searched
19 Plaintiff's home without reasonable cause, (2) Defendant
20 falsely arrested Plaintiff; (3) Defendant used excessive
21 force against Plaintiff; and (4) Defendant arrested Plaintiff
22 in retaliation for exercising his First Amendment rights to
23 free speech and expression. Plaintiff has the burden of
24 proving these claims. Defendant denies those claims.

25 **BURDEN OF PROOF-PREPONDERANCE OF THE EVIDENCE**

26 When a party has the burden of proof on any claim by a
27 preponderance of the evidence, it means you must be persuaded
28

1 by the evidence that the claim is more probably true than not
2 true.

3 You should base your decision on all of the evidence,
4 regardless of which party presented it.

5 **WHAT IS EVIDENCE**

6 The evidence you are to consider in deciding what the
7 facts are, consists of:

8 (1) the sworn testimony of any witness;

9 (2) the exhibits which have been received into evidence;
10 and

11 (3) any facts to which the lawyers may agree.

12 **WHAT IS NOT EVIDENCE**

13 In reaching your verdict, you may consider only the
14 testimony and exhibits received into evidence. Certain
15 things are not evidence, and you may not consider them in
16 deciding what the facts are. I will list them for you:

17 (1) Arguments and statements by lawyers are not
18 evidence. The lawyers are not witnesses. What they will say
19 in their opening statements, closing arguments, and at other
20 times is intended to help you interpret the evidence, but it
21 is not evidence. If the facts as you remember them differ
22 from the way the lawyers state them, your memory of them
23 controls.

24 (2) Questions and objections by lawyers are not
25 evidence. Attorneys have a duty to their clients to object
26 when they believe a question is improper under the rules of
27 evidence. You should not be influenced by the objection or
28 by the Court's ruling on it.

1 (3) Testimony that is excluded or stricken, or that you
2 are instructed to disregard, is not evidence and must not be
3 considered. In addition sometimes testimony and exhibits are
4 received only for a limited purpose; when I give a limiting
5 instruction, you must follow it.

6 (4) Anything you see or hear when the Court is not in
7 session is not evidence. You are to decide the case solely
8 on the evidence received at the trial.

9 **RULING ON OBJECTIONS**

10 There are rules of evidence that control what can be
11 received into evidence. When a lawyer asks a question or
12 offers an exhibit into evidence and a lawyer on the other
13 side thinks that it is not permitted by the rules of
14 evidence, that lawyer may object. If I overrule the
15 objection, the question may be answered or the exhibit
16 received. If I sustain the objection, the question cannot be
17 answered, and the exhibit cannot be received. Whenever I
18 sustain an objection to a question, you must ignore the
19 question and must not guess what the answer might have been.

20 Sometimes I may order that evidence be stricken from the
21 record and that you disregard or ignore the evidence. That
22 means that when you are deciding the case, you must not
23 consider the evidence that I told you to disregard.

24 **DIRECT AND CIRCUMSTANTIAL EVIDENCE**

25 Evidence may be direct or circumstantial. Direct
26 evidence is direct proof of a fact, such as testimony by a
27 witness about what that witness personally saw or heard or
28 did. Circumstantial evidence is proof of one or more facts

1 from which you could find another fact. You should consider
2 both kinds of evidence. The law makes no distinction between
3 the weight to be given to either direct or circumstantial
4 evidence. It is for you to decide how much weight to give to
5 any evidence.

6 **CREDIBILITY OF WITNESSES**

7 In deciding the facts in this case, you may have to
8 decide which testimony to believe and which testimony not to
9 believe. You may believe everything a witness says, or part
10 of it, or none of it.

11 In considering the testimony of any witness, you may
12 take into account:

13 (1) the opportunity and ability of the witness to see
14 or hear or know the things testified to;

15 (2) the witness's memory;

16 (3) the witness's manner while testifying;

17 (4) the witness's interest in the outcome of the case
18 and any bias or prejudice;

19 (5) whether other evidence contradicts the witness's
20 testimony;

21 (6) the reasonableness of the witness's testimony in
22 light of all the evidence; and

23 (7) any other factors that bear on believability.

24 The weight of the evidence as to a fact does not
25 necessarily depend on the number of witnesses who testify
26 about it.
27
28

EXPERT OPINION

Some witnesses, because of education or experience, are permitted to state opinions and the reasons for their opinions.

Opinion testimony should be judged just like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witnesses' education and experience, the reasons given for the opinion and all the other evidence in the case.

CHARTS AND SUMMARIES NOT RECEIVED IN EVIDENCE

Certain charts and summaries not received in evidence may be shown to you in order to help explain the contents of books, records, documents, or other evidence in the case. They are not themselves evidence or proof of any facts. If they do not correctly reflect the facts or figures shown by the evidence in the case, you should disregard these charts and summaries and determine the facts from the underlying evidence.

NO TRANSCRIPT AVAILABLE TO JURY

During deliberations, you will have to make your decision based on what you recall of the evidence. You will not have a transcript of the trial. I urge you to pay close attention to the testimony as it is given.

If at any time you cannot hear or see the testimony, evidence, questions or arguments, let me know so that I can correct the problem.

TAKING NOTES

If you wish, you may take notes to help you remember the evidence. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. Do not let note-taking distract you. When you leave, your notes should be left in the jury room. No one will read your notes. They will be destroyed at the conclusion of the case.

Whether or not you take notes, you should rely on your own memory of the evidence. Notes are only to assist your memory. You should not be overly influenced by your notes or those of your fellow jurors.

**JURY TO BE GUIDED BY OFFICIAL ENGLISH
TRANSLATION/INTERPRETATION**

Languages other than English may be used during this trial. The evidence to be considered by you is only that provided through the official court interpreters and translators. Although you may know Spanish, it is important that all jurors consider the same evidence. Therefore, you must accept the English interpretation and translation. You must disregard any different meaning.

OUTLINE OF TRIAL

The trial will proceed in the following way: First, each side may make an opening statement. An opening statement is not evidence. It is simply an outline to help you understand what that party expects the evidence will show. A party is not required to make an opening statement.

1 Plaintiff will then present evidence, and counsel for
2 Defendant may cross examine. Then Defendant may present
3 evidence, and counsel for Plaintiff may cross examine.

4 After the evidence has been presented, I will instruct
5 you on the law that applies to the case and the attorneys
6 will make closing arguments.

7 After that, you will go to the jury room to deliberate
8 on your verdict.

9 **CIVIL RIGHTS CLAIM - INTRODUCTORY INSTRUCTION**

10 Plaintiff brings his claims under the federal civil
11 rights statute, which provides that any person who, under
12 color of state law, deprives another of any rights,
13 privileges, or immunities secured by the Constitution or laws
14 of the United States shall be liable to the injured party.

15 **CIVIL RIGHTS CLAIM - ELEMENTS AND BURDEN OF PROOF**

16 The parties agree that Defendant acted under color of
17 state law. Therefore, in order to prevail on his civil
18 rights claim against Defendant, Plaintiff must prove by a
19 preponderance of the evidence that Defendant's acts deprived
20 him of his rights under the United States Constitution.

21 In this case, Plaintiff has alleged four ways that
22 Defendant violated his constitutional rights. If you find
23 Plaintiff has proved the elements he is required to prove
24 under the instructions regarding (1) unreasonable search
25 under the Fourth Amendment, (2) probable cause to arrest
26 under the Fourth Amendment, (3) excessive force under the
27 Fourth Amendment, or (4) retaliation in violation of the
28 First Amendment, your verdict should be for Plaintiff. If,

1 on the other hand, Plaintiff fails to prove any of these
2 violations, your verdict should be for Defendant.

3 **FOURTH AMENDMENT RIGHTS - UNREASONABLE SEARCH**

4 First, Plaintiff alleges that Defendant deprived him of
5 his rights under the Fourth Amendment to the Constitution
6 when Defendant searched his house.

7 Under the Fourth Amendment, a person has the right to be
8 free from an unreasonable search of his residence. In order
9 to prove Defendant deprived Plaintiff of this Fourth
10 Amendment right, Plaintiff must prove the following elements
11 by a preponderance of the evidence:

- 12 1. Defendant searched Plaintiff's residence;
- 13 2. In conducting the search, Defendant acted
14 intentionally; and
- 15 3. The search was unreasonable.

16 A person acts "intentionally" when the person acts with a
17 conscious goal to engage in a particular act. Thus,
18 Plaintiff must prove that Defendant meant to search
19 Plaintiff's residence. Although Plaintiff does not need to
20 prove Defendant intended to violate Plaintiff's Fourth
21 Amendment rights, it is not enough if Plaintiff only proves
22 Defendant acted negligently, accidentally or inadvertently in
23 conducting the search.

24 **LAWFULNESS OF PROBATION SEARCHES**

25 In this case, Defendant denies that he searched
26 Plaintiff's home, but he alleges that the officers who did
27 search it did so because they believed that Jaime Arias,
28 Plaintiff's cousin, was residing there. The parties agree

1 that a term of Jaime Arias' court-ordered probation authorized
2 law enforcement agents to search his residence at any time
3 without any showing of probable cause. When a person is on
4 probation, the law permits a peace officer to search that
5 person's residence, without a warrant and without suspicion
6 of criminal conduct, so long as a court has imposed a
7 condition of probation on that person allowing such a search.

8 Law enforcement, however, must have probable cause to
9 believe the probationer actually lives at the residence
10 searched. Therefore, Plaintiff must prove that Defendant
11 searched Plaintiff's residence, and Plaintiff must also prove
12 that Defendant did not have probable cause to believe that
13 Jaime Arias lived at the residence. If Plaintiff proves that
14 Defendant searched the home without probable cause to believe
15 that Jaime Arias lived there, then Defendant's search of the
16 home was unreasonable under the Fourth Amendment. The facts
17 known to Defendant at the time of the search must have been
18 sufficient to support a belief in a person of reasonable
19 caution that Jaime Arias lived at that residence.

20 To determine whether Defendant had probable cause, you
21 must examine the "totality of the circumstances" in a common
22 sense manner.

23 **FOURTH AMENDMENT RIGHTS - PROBABLE CAUSE TO ARREST**

24 Plaintiff's second allegation is that Defendant deprived
25 him of his rights under the Fourth Amendment by arresting him
26 without probable cause.

27 Under the Fourth Amendment, the arrest of a person
28 without a warrant is reasonable if the arresting officer had

1 probable cause to believe the person was committing a crime
2 in the presence of the officer. In order to prove the arrest
3 in this case was unreasonable, Plaintiff must prove by a
4 preponderance of the evidence that he was arrested without
5 probable cause.

6 "Probable cause" exists when, under all of the
7 circumstances known to Defendant at the time, an objectively
8 reasonable officer would conclude there is a fair probability
9 that Plaintiff was committing a crime.

10 **DEFENITION OF RESISTING, DELAYING, OR OBSTRUCTING**
11 **A PEACE OFFICER**

12 In this case Defendant arrested Plaintiff for willfully
13 resisting, delaying, or obstructing a peace officer in the
14 discharge or attempted discharge of the officer's duty. Under
15 the California Penal Code such conduct is a crime.

16 The definition of this offense is that (1) the suspect
17 willfully resisted, delayed, or obstructed a peace officer;
18 (2) when the officer was engaged in the performance of his
19 duties; and (3) the suspect knew or reasonably should have
20 known that the other person was a peace officer engaged in
21 the performance of his duties.

22 A person willfully resists, delays, or obstructs a peace
23 officer in the performance of his duties by (among other
24 things) physically resisting, hiding, or running away from
25 the officer in violation of a lawful verbal command; ignoring
26 or disobeying the officer's lawful verbal commands; or
27 interfering with the officer's efforts to conduct a lawful
28 search or perform an investigation.

1 Defendant's order to stop in this case is lawful if,
2 under all of the circumstances known to him at the time, he
3 had a reasonable suspicion that Plaintiff was engaged in
4 criminal activity. Reasonable suspicion is an objectively
5 reasonable belief based on specific and articulable facts
6 that Plaintiff was engaged in criminal activity at the time.

7 **FOURTH AMENDMENT RIGHTS - EXCESSIVE FORCE**

8 Plaintiff's third allegation is that Defendant deprived
9 him of his rights under the Fourth Amendment when Defendant
10 used excessive force against him.

11 In general, an arrest of a person is unreasonable under
12 the Fourth Amendment if a police officer uses excessive force
13 in making a lawful arrest. Thus, in order to prove an
14 unreasonable arrest in this case, Plaintiff must prove by a
15 preponderance of the evidence that Defendant used excessive
16 force when he arrested Plaintiff.

17 Under the Fourth Amendment, a police officer may only
18 use such force as is "objectively reasonable" under all the
19 circumstances. In other words, you must judge the
20 reasonableness of a particular use of force from the
21 perspective of a reasonable officer on the scene and not with
22 the 20/20 vision of hindsight.

23 In determining whether Defendant used excessive force in
24 this case, consider all of the circumstances known to
25 Defendant on the scene, including:

26 1. The severity of the crime or other circumstances to
27 which Defendant was responding;
28

2. Whether Plaintiff posed an immediate threat to Defendant's safety or to others' safety;

3. Whether Plaintiff was actively resisting arrest or attempting to evade arrest by flight;

4. The amount of time and any changing circumstances during which Defendant had to determine the type and amount of force that appeared to be necessary;

5. The type and amount of force used.

**FIRST AMENDMENT RIGHTS - RETALIATION FOR EXERCISE OF FREE
SPEECH OR EXPRESSION**

Plaintiff's fourth allegation is that Defendant deprived him of his rights under the First Amendment of the Constitution by arresting Plaintiff in retaliation for his exercise of free speech and expression. Under the First Amendment, Plaintiff had the right to free expression and speech. In order to prove that Defendant violated his First Amendment right, Plaintiff must prove the following elements by a preponderance of the evidence:

1. Plaintiff engaged in speech or expression protected under the First Amendment;

2. Defendant took action against Plaintiff; and

3. Plaintiff's protected speech and expression, or the chilling of Plaintiff's protected speech and expression, were a substantial or motivating factor for Defendant's action.

A substantial or motivating factor is a significant factor.

CAUSATION

In order to establish that the acts of Defendant deprived Plaintiff of his rights under the United States

1 Constitution as explained in these instructions, Plaintiff
2 must prove by a preponderance of the evidence that the acts
3 were so closely related to the deprivation of Plaintiff's
4 rights as to be the moving force that caused the ultimate
5 injury.

6 **NEGLIGENCE AND RECKLESSNESS INSUFFICIENT FOR LIABILITY**

7 A police officer's failure to exercise due care in the
8 exercise of his duties is not sufficient to constitute a
9 violation of Constitutional rights. If you find that
10 Plaintiff suffered an injury due to negligence by Defendant,
11 therefore, such negligence does not constitute a
12 Constitutional violation. Even recklessness does not violate
13 the Constitution. Therefore, if you find that Defendant
14 acted negligently or recklessly, that does not constitute a
15 violation of Plaintiff's constitutional rights.

16 **COMPENSATORY DAMAGES**

17 It is the duty of the Court to instruct you about the
18 measure of damages. By instructing you on damages, the Court
19 does not mean to suggest for which party your verdict should
20 be rendered.

21 If you return a verdict for Plaintiff, then you must
22 award him such sum of money as you believe will fairly and
23 justly compensate him for any injury you believe he actually
24 sustained as a direct consequence of Defendant's conduct.
25 Damages means the amount of money that will reasonably and
26 fairly compensate Plaintiff for any injury you find was
27 caused by Defendant.
28

1 You may award actual damages only for those injuries
2 which you find that Plaintiff has proven by a preponderance
3 of the evidence. Moreover, you may award actual damages only
4 for those injuries which you find Plaintiff has proven by
5 preponderance of the evidence to have been the direct result
6 of Defendant's conduct that violated Plaintiff's rights. That
7 is, you may not simply award actual damages for any injury
8 suffered by Plaintiff -- you may award actual damages only
9 for those injuries that are a direct result of actions by
10 Defendant and that are a direct result of conduct by
11 Defendant which violated Plaintiff's rights.

12 Actual damages must not be based on speculation or
13 sympathy. They must be based on the evidence presented at
14 trial, and only on that evidence. It is for you to determine
15 what damages, if any, have been proved.

16 **MEASURES OF TYPES OF DAMAGES**

17 In determining the measure of damages, you should
18 consider the nature and extent of the mental, physical,
19 emotional pain and suffering Plaintiff experienced and which,
20 with reasonable probability, he will experience in the
21 future.

22 **NOMINAL DAMAGES**

23 The law which applies to this case authorizes an award
24 of nominal damages. If you find for Plaintiff but you find
25 that Plaintiff has failed to prove damages as defined in
26 these instructions, you must award nominal damages. Nominal
27 damages may not exceed one dollar.
28

CONDUCT OF THE JURY

I will now say a few words about your conduct as jurors.

First, keep an open mind throughout the trial, and do not decide what the verdict should be until you and your fellow jurors have completed your deliberations at the end of the case.

Second, because you must decide this case based only on the evidence received in the case and on my instructions as to the law that applies, you must not be exposed to any other information about the case or to the issues it involves during the course of your jury duty. Thus, until the end of the case or unless I tell you otherwise:

Do not communicate with anyone and do not let anyone else communicate with you in any way about the merits of the case or anything to do with it. This includes discussing the case in person, in writing, by phone or electronic means, on Facebook, via e-mail, text messaging, or any Internet chat room, blog, Web site or other feature. This applies to communicating with your fellow jurors until I give you the case for deliberation, and it applies to communicating with everyone else including your family members, your employer, and the people involved in the trial, although you may notify your family and your employer that you have been seated as a juror in this case. But, if you are asked or approached in any way about your jury service or anything about this case, you must respond that you have been ordered not to discuss the matter and to report the contact to the court.

1 Because you will receive all the evidence and legal
2 instruction you properly may consider to return a verdict: do
3 not read, watch, or listen to any news or media accounts or
4 commentary about the case or anything to do with it; do not
5 do any research, such as consulting dictionaries, searching
6 the Internet or using other reference materials; and do not
7 make any investigation or in any other way try to learn about
8 the case on your own.

9 The law requires these restrictions to ensure the
10 parties have a fair trial based on the same evidence that
11 each party has had an opportunity to address. A juror who
12 violates these restrictions jeopardizes the fairness of these
13 proceedings, and a mistrial could result that would require
14 the entire trial process to start over. If any juror is
15 exposed to any outside information please notify the court
16 immediately.

21 Dated: 10/25/2010



CLAUDIA WILKEN
United States District Judge